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you, by Casner & Edwards, and the other local firms that were defending cases?

MS. HARDING: And I am just going to -- I think you have already taken this into consideration. I will object. To the extent it calls for attorney-client privilege or work product, do not answer. But I don't think you are asking him for that. So I just want to make it clear.

THE WITNESS: With a couple of exceptions, which were important but were relatively infrequent, it would be handled by the local counsel. The exceptions are that if we received the deposition notice of a Grace or fact witness of a Grace former employee or an expert, kind of a national asbestos personal injury expert, and we had specific expertise and the fact witness

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case would generally be Bob Murphy.

But we might have somebody from an outside firm that wasn't specifically assigned a jurisdiction to handle that. But in terms of coworker depositions, plaintiff depositions, developing discovery with respect to a particular job site, that would be handled by the local counsel.

BY MR. BROWN:

Q. Okay. Do I gather from your answer that local counsel, for example, in written discovery depositions would inquire into exposure to Grace products?

A. Yes.

Q. Okay. And product ID sometimes called?

A. Yes.

Q. And how about medical issues?

A. Well, as you may know, if you had some prior involvement with it,

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the answer to the question is yes, although in many jurisdictions and certainly in the major jurisdictions, there tended to be a joint medical defense group. And one firm or one particular -- lawyers would often handle some of the medical records issues and the medical testimony issues in the case on behalf of all of the defendants.

Q. Okay. And did your local counsel look for other causes to a particular claimant's injury? For example, if they were a long-term smoker, would that be an issue that Grace pursued in discovery?

A. Sure.

Q. What other sort of defenses in that regard would Grace inquire into?

A. Smoking, alternative exposures, history, you know, whether the person -- where the person worked and exposure to other people's products, questionable diagnoses in a meso case. We would have it sent out to somebody

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else to review the pathology. All the kinds of things that a defense lawyer in an asbestos case and just more broadly in a personal injury case would do.

They were given relatively broad, they being the local counsel, authority to act on Grace's behalf in defending the cases.

Q. Were they told to zealously defend Grace?

MS. HARDING: Well, object to the extent it calls for attorney-client communications.

THE WITNESS: I certainly hope I wouldn't have to tell people to do that since they are members of the bar and they have that ethical obligation.

But, yeah, they were certainly told -- there was a management process, and there were guidelines provided to them to some degree of what they wanted to do and what they shouldn't do.

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1 And there were things that I did
2 in terms of resolving cases that
3 would have taken them out.

4 But, yeah, I think they
5 understood that they were to
6 zealously defend it, and we had
7 some very good lawyers
8 representing us.

9 BY MR. BROWN:

10 **Q. And was it your**
11 **responsibility internally to make certain**
12 **that that happened?**

13 A. Yes.

14 **Q. Now, did you work with any**
15 **asbestos plaintiffs lawyers? When I say**
16 **work with them, did you have interaction**
17 **with any of the big guns in the asbestos**
18 **bar?**

19 A. Personally?

20 **Q. Yes.**

21 A. Yes.

22 **Q. Who?**

23 A. And I was alluding to this
24 earlier. Most of them, certainly in

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1 A. And I dealt with most of
2 them, at least at that time. It's been
3 eight years. I am sure it's a new group.
4 But at that point, many of them.

5 **Q. I am not so sure.**

6 **Give me some examples.**

7 A. You can go down
8 geographically. I know Perry Weitz, and
9 I have met with Perry Weitz. I know Joe
10 Rice. I know Greitzer & Locks. I have
11 dealt with Dino Vovet (phonetic), Peter
12 Angelos' firm many times. I used to know
13 Mike Kelly who has passed away. I know
14 Jim Ferraro. I know Irving Gonzalez, who
15 is in jail. I know -- who else? I have
16 dealt with -- I know Russell Budd and
17 Fred Baron. I have dealt with Peter
18 Krauss.

19 **Q. You mentioned Mr. Cooney**
20 **earlier, I think.**

21 A. Cooney, I know John Cooney.
22 I have met with him.

23 **Q. Any others that you can**
24 **think of?**

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1 terms of the inventory settlement
2 agreements and when we got into the
3 process of settling larger groups, local
4 defense counsel on the asbestos personal
5 injury cases, when it's comes to
6 resolving larger groups, have kind of
7 conflicting motivations.

8 On one hand, they want to do
9 their client a good service, and they
10 want to get rid of cases as cheaply as
11 possible, but on the other hand,
12 inventory settlements where we might buy
13 up or settle the docket for six months,
14 eight months, even two, three months,
15 settlements like that cause the defense
16 lawyers to lose billable hours in terms
17 of their own businesses, lawyers.

18 So when we started getting
19 into those negotiations in the larger
20 groups, I would handle them personally.
21 And it was generally in that capacity
22 that I dealt directly with plaintiffs'
23 lawyers.

24 **Q. Okay.**

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1 A. There is probably others I
2 have met with, and I have missed some.
3 But there are some that I haven't met,
4 either because we didn't get into those
5 kinds of discussions or I was comfortable
6 with the ability of our local counsel to
7 negotiate cases and just the need for me
8 to meet with them didn't arise.
9 Particularly in California, the
10 traditional California firms, I don't
11 recall meeting working with Steve Casner,
12 and there are others out there.

13 **Q. All right. Again, we are**
14 **still focused on the pre-petition time**
15 **frame.**

16 **Was Grace required to obtain**
17 **the consents of any of the members of the**
18 **plaintiffs bar with respect to the manner**
19 **in which Grace defended itself against**
20 **asbestos claims, any of the gentlemen you**
21 **just mentioned?**

22 MS. HARDING: Object to
23 form.

24 THE WITNESS: You will have

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PP's
Obj: R

1 to repeat that.

2 MR. LEWIS: We will have it
3 read back.

4 (The reporter read from the
5 record as requested.)

6 MS. HARDING: I am sorry.

7 MR. LEWIS: I am sorry. I
8 don't understand the question.

9 MR. BROWN: You are not
10 answering it.

11 MR. LEWIS: I just object to
12 the question as unintelligible as
13 stated.

14 MR. BROWN: Do you
15 understand the question?

16 THE WITNESS: I think so.

17 I think the answer is no,
18 although they would occasionally
19 volunteer information to tell
20 Grace how to defend cases.

21 BY MR. BROWN:

22 Q. And you didn't seek their
23 consent?

24 A. No.

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PP's
Obj: R

1 Q. Did the plaintiffs bar
2 participate in the internal
3 decision-making regarding the manner in
4 which Grace defended asbestos claims
5 pre-petition?

6 A. No.

7 Q. Did Grace leave it up to the
8 plaintiffs' attorneys to decide how much
9 Grace would pay for a claim?

10 A. No.

11 Q. Did Grace consult with the
12 plaintiffs bar with respect to the manner
13 in which Grace and its outside counsel
14 defended claims?

15 A. No.

16 Q. Did the plaintiffs'
17 attorneys decide what medical criteria
18 were satisfactory for a settlement with
19 Grace?

20 A. It was a product of
21 negotiation if there were inventory
22 settlements that had specific objective
23 medical criteria. They didn't dictate to
24 Grace what the medical criteria was.

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1 Q. How about the exposure
2 criteria? Did that dictate that to
3 Grace?

4 A. No, they didn't.

5 Q. Did they dictate to Grace
6 the types of proofs that Grace would
7 accept for a settlement?

8 A. Again, it was a negotiation.
9 But, no, they didn't dictate it.

10 Q. Did they decide what type of
11 release Grace would accept in exchange
12 for a settlement?

13 A. No. It's a negotiation.

14 Q. All right. Again,
15 pre-petition, your title was senior
16 litigation counsel?

17 A. Yes.

18 Q. Okay. Did the plaintiff's
19 attorney have the power to remove you if
20 they didn't like the way you were
21 handling the defense of Grace claims?

22 MS. HARDING: Objection.

23 It's relevance at this point.

24 Go ahead.

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1 THE WITNESS: No, they
2 didn't.

3 BY MR. BROWN:

4 Q. Did they control how much
5 you were paid for your job at Grace?

6 A. No.

7 MR. BROWN: I might be
8 finished. Let me have a couple of
9 minutes.

10 (There was a break from 4:11
11 p.m. to 4:16 p.m.)

12 BY MR. BROWN:

13 Q. Mr. Hughes, can I ask you to
14 take a look at what was previously marked
15 Hughes-3?

16 A. (Witness complies with
17 request.)

18 MS. HARDING: Exhibit 4 to
19 the Exhibit Book.

20 MR. LEWIS: Exhibit 4 to the
21 Exhibit Book, which is Exhibit-3
22 to the deposition.

23 BY MR. BROWN:

24 Q. Mr. Hughes, Exhibit-3, there

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1 was a question earlier today. It's the
2 Trust Distribution Procedures, correct?

3 A. Yes.

4 Q. And I think you indicated
5 that you did not draft this document; do
6 I have that correct?

7 A. Yes.

8 Q. I believe you said the ACC,
9 asbestos claimants committee, drafted the
10 document; is that correct?

11 MR. LIESEMER: Object to the
12 form of the question.

13 THE WITNESS: That was my
14 understanding, yes.

15 BY MR. BROWN:

16 Q. Okay. And you indicated
17 that you had reviewed the document?

18 A. Yes, I have.

19 Q. And if I remember your
20 testimony correctly, you indicated that
21 you were given an opportunity to comment
22 on the document?

23 A. Yes.

24 Q. I believe you also stated

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1 that you didn't recall any comment that
2 you had on the document; is that correct?

3 A. I didn't recall any specific
4 comment. I recall that there were some
5 comments I had made.

6 Q. Okay. Do you recall what
7 those comments were?

8 A. Not as I sit here today, no.

9 Q. Okay. I think you were also
10 asked who else at Grace reviewed the
11 document, and I believe your answer was
12 your outside counsel did, reviewed it; do
13 I have that right?

14 A. Yes.

15 Q. Other than you and your
16 outside counsel, are you aware of anyone
17 else that reviewed and drafted the TDP on
18 the Grace side?

19 A. I don't know if Richard
20 Finke or Mark Shelnitz, our general
21 counsel, had taken a look at it at that
22 time. Perhaps Richard was asked about
23 that question when he was deposed. But
24 they would be the other logical

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1 candidates who may have taken a look at
2 it.

3 Q. Okay. And the Trust
4 Distribution Procedures are the
5 procedures pursuant to which asbestos
6 personal injury claims are to be handled
7 if the Plan is confirmed, correct?

8 A. Right, by the Trust.

9 MR. BROWN: Okay. All
10 right. I am going to pass you to
11 Mr. Cohn. Thank you.

12 - - -

13 EXAMINATION

14 - - -

15 BY MR. JACOB COHN:

16 Q. Good afternoon, Mr. Hughes.
17 Jacob Cohn for Federal Insurance Company.
18 How are you?

19 MS. HARDING: Did you all
20 join in somebody's 30(b)(6)?

21 MR. JACOB COHN: No. I am
22 participating as a party in
23 interest here.

24 MS. HARDING: So just to be

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1 clear, you didn't notice the dep
2 and you didn't join anybody else's
3 notice?

4 MR. JACOB COHN: No. I am
5 just a party to the case, and I
6 came to the deposition. And I am
7 entitled to cross-examine, so I
8 am.

9 BY MR. JACOB COHN:

10 Q. Now, Mr. Hughes --

11 MS. HARDING: There are a
12 lot of people who want to ask
13 questions today. Do you have a
14 sense of how long it will take?

15 MR. JACOB COHN: I would
16 think no more than 15 to 20
17 minutes, hopefully less.

18 MS. HARDING: All right. I
19 think in the interest of not
20 having to come back, I will go
21 forward, but I --

22 MR. JACOB COHN: You are
23 burning --

24 MS. HARDING: I will State

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1 an objection on the record that
2 you didn't notice the deposition.

3 MR. JACOB COHN: I don't
4 understand that to be a bona fide
5 deposition objection.

6 MS. DeCRISTOFARO: At one
7 point, there was an email that
8 said in the interest of not having
9 a notice, that not everyone needed
10 to serve separate notices.

11 MR. JACOB COHN: Everything
12 is on the record. **PP's Obj: R**

13 BY MR. JACOB COHN:

14 Q. From 1989 to 2001, you were
15 principally in charge of handling
16 asbestos claims against Grace, correct?

17 A. Asbestos personal injury
18 claims, yes.

19 Q. And from 1989 to 2001 Grace
20 was a for-profit business corporation,
21 correct?

22 A. Yes.

23 Q. So your goal was to minimize
24 the amount of money that Grace had to pay

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1 in the defense and settlement and
2 resolution of asbestos PI claims,
3 correct?

4 A. Yes.

5 Q. Now, just looking for a
6 moment at what was marked Hughes-12,
7 which is Exhibit 6 to the Exhibit Book
8 from the Plan, if you would just take a
9 quick look at the Schedule 2.

10 Now, Schedule 2, am I
11 correct, these are insurance companies
12 that had settlement agreements where they
13 paid a lump sum of money to Grace and
14 received a release for policy obligation;
15 would that be correct?

16 A. That's my understanding.

17 Q. Okay. And, for example,
18 Federal Insurance Company, my client, has
19 a settlement for one of its policies, and
20 I will represent to you that they paid
21 \$300,000 in 1997 to settle a \$500,000
22 sub-limit.

23 Now, that \$300,000 was put
24 into Grace's treasury; is that right?

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1 MS. HARDING: Object to form
2 and foundation. **PP's Ctr.**

3 MR. JACOB COHN: Whatever.
4 You can answer. **PP's Obj: R**

5 THE WITNESS: I assume so,
6 yes.

7 BY MR. JACOB COHN:

8 Q. So that became part of the
9 money that would be available to you,
10 whatever settlement would come in to pay
11 for the resolution of asbestos PI claims,
12 correct?

13 MS. HARDING: Object to
14 form. **PP's Obj: R**

15 THE WITNESS: Well, again, I
16 don't -- yeah. I mean, perhaps
17 indirectly. But there was
18 \$300,000 that was settled and
19 \$300,000 was entered -- became
20 Grace's property, and Grace
21 settled cases as part of its
22 business operations.

23 BY MR. JACOB COHN:

24 Q. And Grace would typically

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1 have to promise the insurer to use those
2 funds to pay for the resolution of
3 asbestos claims; is that accurate?

4 MS. HARDING: Object to
5 form, in terms of typically. **PP's Ctr.**

6 THE WITNESS: Yeah, I guess
7 it's an accounting matter they
8 would apply it to asbestos
9 liabilities. **PP's Obj: R**

10 BY MR. JACOB COHN:

11 Q. All right. Now, Schedule 3
12 is listed as schedule Asbestos Insurance
13 Reimbursement Agreements, right?

14 A. Right.

15 Q. Now, those are what would be
16 typically called a coverage in place
17 agreement; would you agree with that
18 terminology?

19 A. Yes.

20 Q. Okay. So as I understand
21 from Grace's Securities and Exchange
22 Commission filings, most of these
23 agreements require the insurer to pay a
24 portion of every claim that Grace settles

C1	C1	PP's Obj: R
<p>1 that triggers their policy; would that be</p> <p>2 right?</p> <p>3 MS. HARDING: Object to form</p> <p>4 and object to asking him questions</p> <p>5 about generally insurance</p> <p>6 settlement agreements.</p> <p>7 MR. JACOB COHN: Okay.</p> <p>8 MS. HARDING: Every</p> <p>9 agreement is different.</p> <p>10 MR. JACOB COHN: That's</p> <p>11 fine.</p> <p>12 BY MR. JACOB COHN:</p> <p>13 Q. Can I rely upon Grace's SEC</p> <p>14 filings?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So can you describe</p> <p>17 to me the policies that are identified in</p> <p>18 those filings as policies that pay on a</p> <p>19 pro rata basis, how the money would be</p> <p>20 spent and recouped from those insurers?</p> <p>21 MS. HARDING: Object to</p> <p>22 form.</p> <p>23 THE WITNESS: We certainly</p> <p>24 had arrangements with insurance</p>	<p>1 cents on the dollar.</p> <p>2 BY MR. JACOB COHN:</p> <p>3 Q. Would come back in?</p> <p>4 A. Again, it would vary</p> <p>5 depending on where we were in terms of</p> <p>6 the coverage, yes, we would be</p> <p>7 reimbursed. And it varied when, you</p> <p>8 know, during the time period. There is a</p> <p>9 lot of factors that go into that. And I</p> <p>10 don't think you can answer it</p> <p>11 definitively, but it certainly would be</p> <p>12 in the range I mentioned for some period</p> <p>13 of the time.</p> <p>14 Q. And Grace believed it could</p> <p>15 do a better job of handling the claims by</p> <p>16 itself without having the insurers be</p> <p>17 involved; is that accurate?</p> <p>18 MS. HARDING: Object to</p> <p>19 form.</p> <p>20 THE WITNESS: Whether or not</p> <p>21 we thought we could do a better</p> <p>22 job or the insurance carriers</p> <p>23 would prefer that we did it, the</p> <p>24 evolution of it was that Grace</p>	<p>PP's Obj: R</p> <p>PP's Obj: R</p>
C1	C1	
<p>1 companies that provided that they</p> <p>2 would pay us a percentage or a pro</p> <p>3 rata portion of the money we spent</p> <p>4 that triggered their policy that</p> <p>5 we spent on asbestos claims.</p> <p>6 BY MR. JACOB COHN:</p> <p>7 Q. And Grace itself paid a</p> <p>8 portion of every dollar that was spent to</p> <p>9 resolve an asbestos claim, correct?</p> <p>10 A. I think we generally paid it</p> <p>11 in the first instance and was reimbursed</p> <p>12 under these kinds of agreements, but yes.</p> <p>13 Q. And typically how much of</p> <p>14 every dollar that you paid out would you</p> <p>15 be reimbursed from one of these</p> <p>16 agreements?</p> <p>17 MS. HARDING: Object to</p> <p>18 form, foundation.</p> <p>19 Go ahead.</p> <p>20 THE WITNESS: Again, it</p> <p>21 would vary, but based on valuation</p> <p>22 we do on the 1.7 billion and the</p> <p>23 500 million I referred to earlier,</p> <p>24 I think 25 cents on the dollar, 30</p>	<p>1 handled it itself?</p> <p>2 BY MR. JACOB COHN:</p> <p>3 Q. Okay. And at all times,</p> <p>4 while you were there, Grace endeavored to</p> <p>5 minimize the amount of money it had paid</p> <p>6 to resolve asbestos claims; is that fair</p> <p>7 to say?</p> <p>8 A. Yes.</p> <p>9 Q. Now, in 2005, there was a</p> <p>10 conference call between Grace and its</p> <p>11 insurers. Were you a participant in that</p> <p>12 call?</p> <p>13 A. I don't specifically recall,</p> <p>14 but I may have been.</p> <p>15 Q. Do you remember any</p> <p>16 discussion between Grace and its insurers</p> <p>17 to the effect that Grace was not ready to</p> <p>18 deal with its high level excess insurers?</p> <p>19 A. In what sense not ready?</p> <p>20 Q. In the sense of, in the</p> <p>21 course of the bankruptcy proceedings,</p> <p>22 W.R. Grace communicating that sentiment</p> <p>23 to its non-settled high level insurers?</p> <p>24 A. I don't recall that</p>	<p>PP's Obj: R</p>

<div>C1</div> <div>Page 354</div> <div>PP's Obj: R</div>	<div>Page 356</div> <div>PP's ctr</div>
<div>1 conversation.</div> <div>2 Q. You said you were given a</div> <div>3 chance to review the TDPs in 2008 -- I am</div> <div>4 sorry. Was it 2008?</div> <div>5 A. Yeah, it would have been</div> <div>6 2008.</div> <div>7 Q. Okay. Now, at that point in</div> <div>8 time, Grace's obligations pursuant to the</div> <div>9 settlement it reached in April 2008 were</div> <div>10 established, correct?</div>	<div>1 constituencies was the most important</div> <div>2 consideration to Grace in reviewing the</div> <div>3 TDPs?</div> <div>4 MR. LIESEMER: Object to the</div> <div>5 form.</div> <div>6 MS. HARDING: Object to the</div> <div>7 form.</div> <div>8 THE WITNESS: I think that</div> <div>9 the most important consideration</div> <div>10 to Grace in the TDP was that they</div>
<div>11 MS. HARDING: Object to</div> <div>12 form.</div>	<div>11 PP's Obj: R</div>
<div>13 THE WITNESS: Yes. There</div> <div>14 had been a Term Sheet and an</div> <div>15 agreement reached.</div> <div>16 BY MR. JACOB COHN:</div> <div>17 Q. There was a defined amount</div> <div>18 of money and other things that Grace was</div> <div>19 going to give to the Trust to settle its</div> <div>20 asbestos liabilities; is that right?</div> <div>21 A. Yes.</div>	<div>11 THE WITNESS: I think that</div> <div>12 the most important consideration</div> <div>13 to Grace in the TDP was that they</div> <div>14 were, from a legal standpoint,</div> <div>15 sufficiently consistent with, to</div> <div>16 the extent they had to be,</div> <div>17 consistent with the prior practice</div> <div>18 and that they were a reasonable</div> <div>19 means of processing and paying</div> <div>20 claims so that the Plan would be</div> <div>21 confirmed.</div> <div>22 BY MR. JACOB COHN:</div> <div>23 Q. So it was important at this</div> <div>24 point -- strike that.</div>
<div>22 MS. HARDING: Well, just</div> <div>23 object to form.</div> <div>24 THE WITNESS: Asbestos</div>	<div>22 At this point, Grace had no</div> <div>23 additional financial interest in how</div> <div>24 asbestos claims were handled; is that</div>
<div>Page 355</div>	<div>Page 357</div>
<div>1 personal injury liabilities.</div> <div>2 BY MR. JACOB COHN:</div> <div>3 Q. And is it fair to say that</div> <div>4 thereafter, the most significant interest</div> <div>5 that Grace had in the TDPs was insuring</div> <div>6 that it obtained the 75 percent or</div> <div>7 greater vote from the asbestos PI</div> <div>8 claimants?</div>	<div>1 correct?</div> <div>2 MS. HARDING: Object to the</div> <div>3 form.</div> <div>4 THE WITNESS: Well, that's</div> <div>5 not necessarily correct. But we</div> <div>6 certainly had -- since our</div> <div>7 obligation to fund the Trust,</div> <div>8 personal injury Trust, was fixed,</div> <div>9 both in terms of the payments that</div> <div>10 were to be made at the time of</div> <div>11 emergence and the payments off in</div> <div>12 the future, then I guess to that</div> <div>13 extent, yeah, we had already</div> <div>14 established what our liability</div> <div>15 was. And our concern was that the</div> <div>16 Trust Distribution Procedures were</div> <div>17 met whatever legal criteria that</div> <div>18 were necessary and that the Plan</div> <div>19 be confirmed.</div>
<div>9 MS. HARDING: Object to</div> <div>10 form.</div>	<div>9 PP's ctr</div>
<div>11 THE WITNESS: It was</div> <div>12 important to Grace that we emerge</div> <div>13 from bankruptcy and that the Trust</div> <div>14 and so on and the Plan proceed so</div> <div>15 that the reorganized company could</div> <div>16 emerge from bankruptcy and be free</div> <div>17 from its asbestos liabilities.</div> <div>18 That was the purpose of the</div> <div>19 Chapter 11, and that was obviously</div> <div>20 Grace's interest.</div>	<div>10 THE WITNESS: Well, that's</div> <div>11 not necessarily correct. But we</div> <div>12 certainly had -- since our</div> <div>13 obligation to fund the Trust,</div> <div>14 personal injury Trust, was fixed,</div> <div>15 both in terms of the payments that</div> <div>16 were to be made at the time of</div> <div>17 emergence and the payments off in</div> <div>18 the future, then I guess to that</div> <div>19 extent, yeah, we had already</div> <div>20 established what our liability</div> <div>21 was. And our concern was that the</div> <div>22 Trust Distribution Procedures were</div> <div>23 met whatever legal criteria that</div> <div>24 were necessary and that the Plan</div> <div>25 be confirmed.</div>
<div>21 BY MR. JACOB COHN:</div> <div>22 Q. So is the answer to my prior</div> <div>23 question yes, getting 75 percent super</div> <div>24 majority approval by the asbestos</div>	<div>21 BY MR. JACOB COHN:</div> <div>22 Q. So as of the time that the</div> <div>23 settlement was reached, your concern with</div> <div>24 the TDPs was that they enable a Plan to</div> <div>25 be confirmed in a way that would enable</div>

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1 **Grace to have finality with respect to**
 2 **its asbestos obligations and emerge as a**
 3 **for-profit corporation again?**

4 MS. HARDING: Object to
 5 form. I think it mischaracterizes
 6 and doesn't completely accurately
 7 summarize what he just said
 8 regarding legal criteria.

9 BY MR. JACOB COHN:

10 **Q. Would you agree with what I**
 11 **just said?**

12 A. No. We operated in
 13 bankruptcy as a for-profit company. I
 14 think our goal would be to operate as a
 15 corporation unencumbered by asbestos
 16 liabilities.

17 MR. JACOB COHN: No further
 18 questions. Thanks.

19 - - -
 20 EXAMINATION

21 - - -
 22 BY MS. SIMON:

23 **Q. Good afternoon. My name is**
 24 **Marnie Simon. I represent Fireman's Fund**

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1 **Insurance Company and the Allianz related**
 2 **entities.**

3 A. Sure.

4 **Q. I believe you testified when**
 5 **speaking with Michael Brown that**
 6 **reviewing the GEICO policies under, I**
 7 **think it was, Exhibit-12 here and Exhibit**
 8 **6 to the Plan Asbestos Insurance Transfer**
 9 **Agreement, I believe you testified there**
 10 **that to your knowledge, GEICO had not --**
 11 **there were no agreements between Grace**
 12 **and GEICO in terms of GEICO ceding or**
 13 **waiving its rights under those excess**
 14 **policies; is that correct?**

15 A. Yes.

16 **Q. And would you answer --**

17 A. That I was aware of.

18 **Q. That you were aware of.**

19 **And would your answer be the**
 20 **same for the Fireman's Fund and Allianz**
 21 **companies?**

22 A. You are talking with respect
 23 to the excess insurance policies?

24 **Q. The excess policies of**

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1 **Allianz on page 1 of Schedule 1, the**
 2 **Fireman's Fund policies on page 7 of**
 3 **Schedule 1, and then the Reunion -**
 4 **Adriatica policy on page 16.**

5 MS. MAHALEY: I object to
 6 the form of the question.

7 BY MS. SIMON:

8 **Q. Are you aware of any**
 9 **agreements with those insurance companies**
 10 **to waive their rights under their excess**
 11 **policies that was in place with Grace**
 12 **pre-petition?**

13 A. No, I am not.

14 MS. HARDING: Object to
 15 form.

16 MS. SIMON: That's all.

17 - - -

18 EXAMINATION

19 - - -

20 BY MS. McCABE:

21 **Q. Good afternoon, Mr. Hughes.**
 22 **My name is Eileen McCabe, and I here**
 23 **today --**

24 A. I remember you Eileen.

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1 **Q. I am here today on behalf of**
 2 **AXA Belgium as a successor to Royale**
 3 **Belge.**

4 **And just to make this go**
 5 **quickly, if I could follow up with the**
 6 **same questions that were just asked to**
 7 **you with regard to the Royale Belge**
 8 **policies that appear on page 16 of what's**
 9 **been designated Hughes Exhibit-12. There**
 10 **are three policies that are identified**
 11 **there for excess policies.**

12 **Are you aware of any**
 13 **agreement that Royale Belge had**
 14 **pre-petition pursuant to Royale Belge**
 15 **ceded or waived any of its excess**
 16 **policies as listed on that policy?**

17 MS. HARDING: Object to
 18 form.

19 THE WITNESS: No, I am not.

20 MS. McCABE: That's it.

21 - - -

22 EXAMINATION

23 - - -

24 BY MR. SCHIAVONI:

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1 was correct, that you didn't -- it
2 was one of those backwards things.

3 THE WITNESS: Sorry.

4 BY MR. SCHIAVONI:

5 Q. Some of your data may be in
6 Exhibit-1, but you didn't prepare
7 Exhibit-1 and you didn't supervise the
8 preparation of Exhibit-1; is that right?

9 A. I did not prepare Exhibit-1,
10 nor did I supervise the preparation of
11 Exhibit-1.

12 Q. The 1995 Grace/Royal
13 settlement covered policies issued to the
14 Zonolite Company; is that generally
15 right?

16 A. Yes.

17 Q. Okay. Are you aware whether
18 Royal's also alleged to have issued,
19 entirely separate from that, a high level
20 excess policy in the 1980s to Grace?

21 A. I learned that in connection
22 with the bankruptcy. I am not sure I
23 knew that beforehand.

24 Q. Okay. But sitting here

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1 today, you are familiar with the fact
2 that there is a separate high level
3 excess policy that Royal has issued in
4 '80s to Grace; is that right?

5 A. I believe so, yes.

6 Q. And Mr. Brown asked you some
7 questions about whether or not rights to
8 associate in the defense and to
9 cooperated had been ceded by his clients
10 to Grace.

11 Do you remember those
12 questions generally?

13 MS. HARDING: Object to
14 form.

15 But go ahead.

16 MR. SCHIAVONI: All right.

17 THE WITNESS: There are
18 questions about it. I think the
19 question was whether we had waived
20 or all agreed, and the answer was
21 no, I wasn't aware of any such
22 agreement.

23 BY MR. SCHIAVONI:

24 Q. Has either Royal or

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1 Arrowwood ceded or in any way waived or
2 given up any of its rights to associate
3 in the defense or cooperate or any other
4 rights under its high level excess
5 policy?

6 A. Not that I am aware of.

7 MS. HARDING: Object the
8 form with respect to rights.

9 BY MR. SCHIAVONI:

10 Q. And am I correct that prior
11 to the bankruptcy filing, Grace hadn't
12 tendered any claims to Royal under that
13 high level excess policy?

14 A. I don't know the extent to
15 which we were tendered claims
16 pre-petition to high level excess
17 policies. Generally, the notice of the
18 claims was done by our insurance broker.

19 Q. Okay. So you don't know one
20 way or the other?

21 A. I don't.

22 MR. SCHIAVONI: That's all I
23 have. Thank you, Mr. Hughes.

24 - - -

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1 EXAMINATION

2 - - -

3 BY MR. IFFT:

4 Q. Good afternoon, Mr. Hughes.

5 A. Good afternoon.

6 Q. My name is Richard Ifft. I
7 represent Maryland Casualty Company and
8 two Zurich entities, Zurich Insurance
9 Company and Zurich Insurance Bermuda
10 Company.

11 A. Okay.

12 Q. I am not, I think, going to
13 ask many questions about Maryland
14 Casualty today.

15 With respect to Zurich, I
16 will represent to you that the two Zurich
17 entities issued a number of high level
18 excess policies, and I will direct your
19 attention to what we have marked as
20 Exhibit-12, the Exhibit 6 to the Exhibit
21 Book for the Plan.

22 Directing your attention to
23 Schedule 1, page 20, you will see there
24 is about 11 or so participations on that

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<p>1 last page.</p> <p>2 A. Yes.</p> <p>3 Q. If I were to ask you the</p> <p>4 same questions that other carriers have</p> <p>5 asked you, if you are aware of any</p> <p>6 waivers by any of the Zurich entities of</p> <p>7 their rights under the policy, are you</p> <p>8 aware of that with respect to those</p> <p>9 policies?</p> <p>10 A. No, I am not.</p> <p>11 MS. HARDING: Object to</p> <p>12 form --</p> <p>13 MR. LIESEMER: Object to</p> <p>14 form.</p> <p>15 MS. HARDING: -- as to</p> <p>16 rights.</p> <p>17 BY MR. IFFT:</p> <p>18 Q. You are aware, Mr. Hughes,</p> <p>19 that the excess insurers under their</p> <p>20 policies typically have certain rights</p> <p>21 with respect to their ability to be</p> <p>22 involved with respect to the handling of</p> <p>23 the claims against Grace?</p> <p>24 A. Yes.</p>	<p>1 A. No, I am not.</p> <p>2 Q. I think you testified that</p> <p>3 you had some familiarity with Asbestos</p> <p>4 Insurance Reimbursement Agreements</p> <p>5 generally, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And what's your</p> <p>8 understanding as to how those typically</p> <p>9 work?</p> <p>10 A. They typically would work</p> <p>11 that as the costs were incurred under --</p> <p>12 we would agree in terms of how it was</p> <p>13 allocated, but Grace had a model in terms</p> <p>14 of how the terms were allocated on</p> <p>15 different policies. And to the extent</p> <p>16 the policy was triggered that the party,</p> <p>17 in this case Zurich International, would</p> <p>18 pay Grace or reimburse Grace for some</p> <p>19 portion of the costs that were incurred</p> <p>20 for those claims.</p> <p>21 Q. Pursuant to a defined</p> <p>22 percentage in the agreement?</p> <p>23 A. Defined percentage,</p> <p>24 generally, yes.</p>	
C1	C1	
<p>1 MR. LIESEMER: Object to the</p> <p>2 form.</p> <p>3 BY MR. IFFT:</p> <p>4 Q. And is it your testimony</p> <p>5 that you are not aware of any waiver of</p> <p>6 any such rights by the Zurich companies</p> <p>7 with respect to their policies?</p> <p>8 MS. HARDING: Object to form</p> <p>9 again.</p> <p>10 But go ahead.</p> <p>11 MR. IFFT: You can answer.</p> <p>12 THE WITNESS: I am not aware</p> <p>13 of any.</p> <p>14 BY MR. IFFT:</p> <p>15 Q. Let me direct your attention</p> <p>16 to Schedule 3. I will represent to</p> <p>17 you that this is the Schedule of Asbestos</p> <p>18 Insurance Reimbursement Agreements, and</p> <p>19 you will see at the bottom there is one</p> <p>20 agreement with Zurich International with</p> <p>21 respect to, I will represent to you, one</p> <p>22 of those 11 policies.</p> <p>23 Do you happen to be familiar</p> <p>24 with that agreement, sitting here today?</p>	<p>1 Q. Do those agreements also</p> <p>2 typically have any provisions that on</p> <p>3 their face alter the rights that</p> <p>4 otherwise might exist under the policy</p> <p>5 with respect to the insurer's involvement</p> <p>6 in the claims?</p> <p>7 MS. HARDING: Object to</p> <p>8 form.</p> <p>9 MR. LIESEMER: Join.</p> <p>10 THE WITNESS: I think that</p> <p>11 would vary. My understanding</p> <p>12 would be generally no, but I think</p> <p>13 that it certainly -- I would have</p> <p>14 to look at the individual</p> <p>15 agreement to comfortably say that.</p> <p>16 BY MR. IFFT:</p> <p>17 Q. Okay. You are not sure,</p> <p>18 sitting here today?</p> <p>19 A. I am not sure, but you are</p> <p>20 also ask asking me specifically about</p> <p>21 agreements. And your other questions</p> <p>22 were generally in the absence, but here</p> <p>23 there were agreements. And I have to</p> <p>24 look at the individual agreements before</p>	PP's Obj: R

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1 making a blanket statement about what
2 they provide and what they don't provide.

3 **Q. Fair enough. They may or**
4 **may not have, and you would have to look**
5 **at the agreement?**

6 A. Right.

7 MR. IFFT: I don't have
8 anything further.

9 - - -
10 EXAMINATION

11 - - -
12 BY MS. DeCRISTOFARO:

13 **Q. Good afternoon, Mr. Hughes,**
14 **my name is Elizabeth DeCristofaro. I**
15 **represent a group of insurance companies**
16 **Continental Insurance Company,**
17 **Continental Casualty, generally referred**
18 **to as the CNA Insurance Companies.**

19 And you are familiar that
20 the CNA Insurance Companies issued
21 insurance policies to Grace?

22 A. Yes.

23 **Q. I am trying to do this**
24 **without having to take you through a**

1 form.

2 MS. HARDING: Object the
3 form.

4 **THE WITNESS: No, I am not**
5 **aware of any agreement.**

6 MS. DeCRISTOFARO: Then I
7 have no further questions.

8 MS. HARDING: We are done in
9 the room. Elisa, do you want to
10 go?

11 - - -
12 EXAMINATION

13 - - -
14 BY MS. ALCABES:

15 **Q. Hi. This is Elisa Alcabes**
16 **from Simpson, Thacher & Bartlett, Mr.**
17 **Hughes. I am counsel for Travelers**
18 **Casualty and Surety Company previously**
19 **known AETNA.**

20 A. Yes.

21 **Q. You mentioned before that**
22 **you had involvement in the reimbursement**
23 **agreement pre-petition; is that correct?**

24 A. Yes.

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1 number of names and policies.

2 You are aware that some of
3 the policies issued by the CNA Companies
4 to Grace were high level excess policies;
5 is that correct?

6 A. Yes.

7 **Q. And there has been no**
8 **settlement or other agreements affecting**
9 **those high level high level excess**
10 **policies; is that correct?**

11 MS. HARDING: Object to
12 form.

13 Go ahead.

14 **THE WITNESS: That's my**
15 **understanding, yes.**

16 BY MS. DeCRISTOFARO:

17 **Q. So to follow up on the**
18 **questions you were asked previously, you**
19 **are not aware of any agreement in which**
20 **the companies that issued those high**
21 **level excess policies waived or**
22 **surrendered any rights under those**
23 **policies?**

24 MR. LIESEMER: Object to

1 **Q. And I believe you said that**
2 **you were in part responsible for insuring**
3 **that Grace undertook its obligations**
4 **under the reimbursement agreement?**

5 A. Yes. And I was involved in
6 disputes that arose concerning those
7 obligation.

8 **Q. With respect to allocation,**
9 **I believe you just mentioned that there**
10 **was a model that Grace used; is that**
11 **correct?**

12 MS. HARDING: Object to
13 form. It misstates the testimony
14 but go ahead.

15 THE WITNESS: Yes.

16 BY MS. ALCABES:

17 **Q. Can you just explain a**
18 **little bit more how Grace allocated or**
19 **performed allocation that was necessary**
20 **under the reimbursement agreement?**

21 A. I can tell you who did it, I
22 can tell you that it was done, but I
23 can't give you specifics and the details
24 of how that was done.

1 I think that's a question
2 that's overly broad, and I think
3 it really -- it's specific to an
4 insurance company and to law firms
5 and to jurisdictions.

6 But, again, we worked with
7 insurance companies in settling
8 and resolving these claims and
9 resolving their coverage over the
10 course of the 15, 20 years I was
11 involved in it.

12 BY MR. LEWIS:

13 **Q. Did any insurer that had**
14 **coverage for Grace, any insurer, object**
15 **to the manner in which you were**
16 **conducting the defense of the claims for**
17 **asbestos-related disease against Grace?**

18 MR. SCHIAVONI: Object to
19 form.

20 THE WITNESS: None that I
21 recall.

22 MR. LEWIS: That's all I
23 have.

24 MR. BROWN: Let's mark

1 Hughes-15.

2 (Hughes-15 marked for
3 identification at this time.)

4 MS. HARDING: Just to save
5 time, again, Exhibit 5 to the Plan
6 was topic upon which Mr. Finke was
7 designated to testify and I think
8 did. But to the extent that the
9 witness can answer the questions
10 related to it, go ahead.

11 MR. BROWN: It's an
12 insurance-related question.

13 MS. HARDING: I understand.

14 - - -

15 EXAMINATION

16 - - -

17 BY MR. BROWN:

18 **Q. Mr. Hughes, can you look at**
19 **what's been marked Exhibit-6, Schedule 1,**
20 **we talked about that earlier? I think**
21 **that's 5 there in front of you.**

22 A. Yes.

23 **Q. If you look at Exhibit 6.**

24 MS. HARDING: Which is

1 Hughes Exhibit-12.

2 BY MR. BROWN:

3 **Q. Can you go to Schedule 1 of**
4 **that document?**

5 A. Yes.

6 **Q. And specifically, page 18, I**
7 **direct your attention down toward the**
8 **bottom of the document, you will see**
9 **Unigard Security.**

10 **Do you see that?**

11 A. Yes.

12 **Q. And do you see in the policy**
13 **number column that there are two policies**
14 **listed?**

15 A. Yes.

16 **Q. Okay. There is one 1-0589**
17 **and 1-2517. Do you see those?**

18 A. Yes.

19 **Q. Now, could you go to what's**
20 **been marked as Exhibit-15, which is**
21 **Exhibit 5 to the Exhibit Book, and turn**
22 **to page 9.**

23 **If you see at the bottom of**
24 **that there is a reference there to two**

1 **settlement agreements for Unigard**
2 **Security Insurance Company? Do you see**
3 **those?**

4 A. Yes.

5 **Q. And it says "now known as**
6 **Seaton"?**

7 A. Yes.

8 **Q. Okay. Do you understand**
9 **those two settlement agreements to**
10 **pertain to the two policies that are on**
11 **the first exhibit that I had you look at?**

12 MS. HARDING: Object on
13 foundation, to the extent that you
14 know. And --

15 BY MR. BROWN:

16 **Q. You can look at the policy**
17 **numbers.**

18 A. Yeah, they have the same
19 policy numbers.

20 **Q. Okay. Now, would you look**
21 **at Schedule 2 to Exhibit 6? Do you see**
22 **that there are two settlement agreements**
23 **listed there for Unigard Security**
24 **Insurance Company?**

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PP's
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PP's Obj:
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A. Yes.

Q. Do you understand those two settlement agreements to relate to the references of the prior document?

MS. HARDING: Object on foundation. Mr. Finke testified that he prepared these schedules.

But to the extent that you know, go ahead.

THE WITNESS: I mean, they have the same policy numbers -- excuse me. They don't have policy numbers on Schedule 2, but they have the same dates in the agreement.

BY MR. BROWN:

Q. It's your understanding it's the same agreement, correct?

MS. HARDING: Object on foundation.

THE WITNESS: Yes.

BY MR. BROWN:

Q. Okay. Are you aware of any other agreements between Grace and

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Unigard, or its successor, Seaton, regarding Unigard policy number 1-0589 or 1-2517 relating to asbestos-related coverage other than the two that are listed there?

A. Settlements, did you say?

Q. Yes.

A. No, I am not.

Q. Are you aware of any other agreements between Grace and Unigard, or Seaton, regarding claims handling under any coverage that is alleged to exist under policy number 1-0589 or 1-2517?

A. No, I am not.

MR. BROWN: Thank you.

MR. SCHIAVONI: Just four or five things, sir.

EXAMINATION

BY MR. SCHIAVONI:

Q. Is it fair to say that you have no personal knowledge concerning the circumstances under which Exhibits 6

through 9 were prepared?

A. No.

MS. HARDING: Is it fair to say?

THE WITNESS: I am sorry.
BY MR. SCHIAVONI:

Q. Let me ask again. That was a mistake right that you just said?

A. Yes, it was.

Q. Is it fair to say that you have no personal knowledge concerning the circumstances under which Exhibits 6 through 9 were prepared?

A. I have no personal knowledge of the circumstances through which Exhibits 6 through 9 were prepared.

Q. All right. Those are exhibits at this deposition, 6 through 9, right?

A. Yes.

Q. And I am sorry to ask you this, I apologize, but how old were you in 1963?

MR. LEWIS: I object.

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That's an impertinent question.

THE WITNESS: I was 6 years old.

MR. SCHIAVONI: It demonstrates how silly your questions were, sir.

BY MR. SCHIAVONI:

Q. How old were you in 1963?

A. I was 6.

Q. Is it fair to say you didn't work at Grace in the '50s and '60s, right?

A. No, I didn't.

Q. And you never worked at the Zonolite Company; is that right?

A. No, I didn't.

Q. Is it fair to say that you, Mr. Hughes, have no personal knowledge as to whether or not any policies were actually issued to BNSF in the '50s or '60s, do you, because you weren't around then?

A. No, I don't.

MR. SCHIAVONI: Thank you,